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SUPREME COURT, U.S.

80-6646

IN THE

SUPREME COURT OF THE UNITED STATES

NO.

HERSE L WHITE, APPELLANT

UNITED STATES OF AMERICA, APPELLEE

JURISDICTIONAL STATEMENT FOR APPEAL FROM THE

DISTRICT OF COLUMBIA COURT OF APPEALS

TO THE MOST HONORABLE CHIEF JUSTICE AND
ASSOCIATE JUSTICES OF THE SUPREME COURT
OF THE UNITED STATES

HERSE L. WHITE
P. O. Box 25
Lorton, Va. 22079

Counsel for Appellant

April 30th, 1981

80-6646

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DISTRICT OF COLUMBIA COURT OF APPEALS

QUESTIONS PRESENTED

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1. Whether the original counsel rendered ineffective assistance of counsel, and the guilty plea illegal by misleading the appellant to enter the plea, by threats, tricks, lie's and false promises.

2. Whether the case and indictment was in violations of due process of law because of the presence of an ex prejudiced hostile tenant of the appellant's, who was present for the grand jury hearing with the prosecutor as an employee.

3. Whether the trial court erred and denied the appellant due process of law by not holding a hearing de novo before sentencing to inquire into the validity of the plea, after appellant informed the court in open court that he was not guilty and that he had defense's and that the plea was counsel's idea, inter alia.

4. Whether the trial court erred and denied appellant due process of law by making a substantial amount of money contingent to probation and denying probation for the same, while appellant was indigent.

5. Whether the sentence is excessive and cruel and unusal punishment, resulting from the trial court relying on erroneous information and abuse of discretion

6. Whether Grandison Hill, court appointed, rendered ineffective assistance of counsel by not properly or fully raising all of the appellant's claims in motion and hearing to withdraw the illegal plea.

7. Whether the appellant was denied due process by the prosecutors being a part of the deal to get Collins to mislead the appellant to enter the guilty plea, their demand for a substantial amount of money contingent to probation, and their knowledge of the relation (Landlord Tenant) between Mrs. Gardner and the appellant.

8. Whether the appellant was denied due process of law by the transcripts being altered.

9. Whether the appellant was denied due process of law by the trial court and the D. C. Appeals Court refusal to answer or afford the appellant a copy of the transcript of the December 21, 1977, oral hearing in this case.

10. Whether the D. C. Appeals Court denied appellant due process of law by affirming the lower Court's decision denying the appellant's motion to vacate, without an oral hearing, when the record does not refute the appellant's claims and without a full or proper hearing.

11. Whether 23 D. C. Code 110, was effective or adequate to protect the constitutional rights of the appellant.

12. Whether the District of Columbia Statue in allowing no appellate review violates due process under the Fourteenth Amendment which requires that there be some available process to test the constitutionality of state actions.

THE OPINION BELOW

On April 3, 1981, the D. C. Appeals Court issued a Memorandum Opinion and Judgment affirming the lower Court's denial of the relief sought by the appellant. Apparently, the opinion has been ordered for publication, but has not yet appeared.

JURISDICTIONAL GROUNDS

The case was an appeal from the denial by the D. C. Superior Court of appellant's motion to vacate under 23 D. C. Code 110, with out a full, proper or fair hearing. 23 D. C. Code 110, is suposed to be equivalent to or substitute for Habeas Corpus in this jurisdiction. Swain v Pressley, 430 U. S. 372, 51 L ed 2d 411, 97 S. Ct. 1224 (1977). This is a case where 23 D. C. Code 110, was ineffective and inadequate to protect the constitutional rights of the appellant. See, Swain v Pressley, supra, n. 20. Further, there appears to be no review of a denial of constitutional rights at appeal in the District of Columbia, save through direct appeal to this court.

Jurisdiction of this court is founded on 28 U. S. C. 1257(2)(3). The decision below establishes that the District of Columbia Statue was inadequate and ineffective to protect the constitutional rights of the appellant, and that there are no further intermediate appellate review.

THE STATUE

The statue in question is 23 D. C. Code 110. See, D. C. Court of Appeals Opinion and Judgment, included in the appendix.

STATEMENT OF THE CASE

Appellant Herse L. White, was originally charged with approximatly eleven counts of "larceny after trust" in violations of 22 D. C. Code 2203, to which he entered a plea of not guilty. Thereafter, appellant retained Leonard Collins and explained to him that the money in question was stolen by an ex employee, et al, who forged the appellant's name on checks to get the money.

Appellant went on to explain to Collins that an ex tenant who he had the unfortunate task of asking to move, was present for the grand jury hearing with the prosecutor as an employee, and that she was prejudice against the appellant. Appellant left a check with Collins for Six Thousand Dollars and informed him to be for sure the money was distributed to the people who lost money in this case. Sometime thereafter, appellant was confronted by Mrs. Gardner, et al, in a Murray's Store on Georgia Avenue, N. W., where she threatened the appellant and his daughter and informed him that he was going to jail because he had no business putting them out of the apartment on Georgia Ave., N. W., Washington, D. C. (See affidavit of T. V. Man and daughter), appended. Later, and by chance, appellant discovered who one of the thief's were that was forging checks on his accounts. The above mentioned tangible evidence (defense's) were all placed in counsel's lap, matter of fact, it was counsel who placed a few calls in an effort to help appellant get some of the money returned. Hence, Collins continued to insist that appellant plead guilty if he wanted to return the money. He contended that to raise the defense's would be useless because he had worked out a deal with all concerned, and assured appellant that the prejudice of the ex tenant would be superseded by his deal, because the appellant would only receive a slap on the wrist or a day in jail with probation that would be vacated as soon as the money was returned. Counsel and appellant fought in reference to the plea because appellant knew how Mrs. Gardner felt about him, and most of the time Collins would threaten to get off the case unless appellant pleaded guilty. There came a time when Collins tricked Appellant into signing that he would plead guilty, however, that document had no date nor title on it, and appellant had not intended to plead guilty when he copied and signed it for Collins.

Finally, in a room in the rear of the court on April 27, counsell induced appellant into changing the plea to guilty, by assuring him that the deal was alright. It was at this point that counsel informed appellant that he had a bad heart and that he did not think his heart could stand a protracted trial. He renewed his threat to get off the case unless I changed the plea to guilty and reminded me that he had never lied to me before. Thereafter, appellant reluctantly changed the plea to guilty. This court in Kercheval v United States, 274 U. S. 220, 71 L ed 1009, 47 S. Ct. 582 (1927), indicated that it recognized that an unfairly obtained guilty plea ought to be vacated, it opined:

> ON TIMELY APPLICATION, THE COURT WILL VACATE A PLEA OF GUILTY SHOWN TO HAVE BEEN UNFAIRLY OBTAINED OR GIVEN THROUGH IGNORANCE, FEAR OR INADVERTENCE. SUCH AN APPLICATION DOES NOT INVOLVE ANY QUESTION OF GUILT OR INNOCENCE. Id., at 224, 71 L. ed 1012

In December, 1978, Grandison Hill, court appointed, presented a motion to withdraw the illegal guilty plea, however, he improperly raised only a part of the issue of ineffective assistance, and for some unknown reason, failed to fully raise all of the issues of the case. This may have also been more "game", because Hill did not investigate nor did he return to Lorton to discuss the case with the appellant as he had promised. After that hearing appellant informed Hill not to appeal because he had not properly or fully raised the issue's, and thereafter, appellant wrote the court and Mr. Hill a letter to the same effect.

In Augudt 1979, appellant received the court's denial of his motion for probation, he promptly filed his motion to vacate to the COURT raising all of the issues. After the court took like what seemed for ever to answer, the appellant filed a motion for bond. See denial appened. When the government did respond, they attempted to place Mrs Gardner in every other position except the one the appellant had alleged. The court followed their pattern in his denial.

The trial court decided and denied the motion to vacate without a hearing to receive the proffered testismony and evidence offered in support of the motion. He alluded to the position of Mrs Gardner as a witness, without proof, and while the appellant knew the position of the ex tenant. He decided on the merits of the case.

On appeal, the D. C. Appeals Court affirmed, they concluded that the appellant's claims had been fully addressed at the prior hearing or was vague and conclusory, they referred to the wording of 23 D. C. Code 110)c); However, its clear that they could not properly decide on the case because the issue's of ineffective assistance and the defect in the institution was outside the record and a hearing would be necessary for them to properly decide. In indicating that the motion tovacate was definite or vague, they cited Pettaway v United States, D. C. App., 390 A. 2d 981 (1978), a cite where the court referred the defendant back to the lower court. The question here is how can anything be definite and vague at the same time since definite is contrary to vague, its not possible, and if the motion appeared vague to them they should have reversed or indicated to refile.

Justice like crime, especially violate crime, should not be tolerated.....both are wrong, and no two wrong's could make a right. Appellant respectfully submit to this court, that this case was prejudiced before it's begining, it's petty prejudice that prevented the appellant's release and the proper adjudication of this case. The illegal indictment should be dismissed and the illegal sentence should be vacated. See Reese v Georgia, 350 U. S. 85, 100 L ed 77 (1955); Mooney v Holohan, 294 U. S. 103, 79 L ed 794, 55 S. Ct. 340.

SIGNIFICANCE OF QUESTIONS PRESENTED

This is an appellant who very strongly disapprove of crime or injustice or any other ignoble behavior, who has by some unfortunate reason been caught in a situation worse than a "Catch 22". He has been denied his constitutional rights by the D. C. Court's, they have ruled contrary to both statutory and decisional law, in violation of the U. S. Constitution.

23 D. C. Code 110 was ineffective and inadequate to protect his rights, and the case arises in a jurisdiction with no intermediate appellant court. In this jurisdiction there is no State Habeas Corpus as afforded to the State's through the Fourteenth Amendment and no federal right since Swain v Pressley, supra.

Failure to consider this case denies and leaves open the unresolved constitutional rights of the appellant as well as others of the District of Columbia.

WHEREFORE, appellant move (prays) this court allow briefs on the merits and oral arguments, considering not only the rights of the appellant or others in the District of Columbia, but as a guide as to what constitutes the limit of state power throughout the country.

Herse L. White

1./ The trial court's delay in answering the appellant's motion to vacate, inter alia, has also prejudiced this case. See Judge Flannery's statement in Jackson v Jackson, 491 F. Supp. 445 (1980), referring to 23 D. C. Code 110 as the same as Habeas Corpus; quoting Braden v 30th Judicial Circuit, 410 U. S. 484 (1973); Habeas Corpus is by definition a "swift and imperative remedy".

2./ Appellnat attempted to move the federal court, see case #80-0446

3./ Appellant has received a sentence greater than many repeat violate offenders.

APPENDICES

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CRIMINAL DIVISION

UNITED STATES OF AMERICA :

v. : Criminal Nos. 74050-76
21701-77

HERSE L. WHITE :

O R D E R

Upon consideration of defendant's pro se motion for bond pending decision on his motion to vacate sentence pursuant to 23 D. C. Code §§ 110,[1/] and the government's opposition thereto, there having been no notice of appeal or writ of certiorari filed at the time the instant motion was made, the court lacks authority to grant bond. See 23 D. C. Code §§ 1325(c). Therefore it is this 30th day of October, 1980

ORDERED that defendant's motion be, and same is hereby, denied.

CHIEF JUDGE

Copies sent to:

Pamela B. Stuart, Esquire
Assistant United States Attorney

Mr. Herse L. White

1/ Defendant's pro se motion to vacate sentence was denied September 30, 1980 and, therefore, the instant order is entered nunc pro tunc.

District of Columbia
Court of Appeals

DISTRICT OF COLUMBIA
COURT OF APPEALS

FILED APR 03 1981

JAMES F. LYNCH, Acting Clerk

No. 80-1157

HERSE L. WHITE, Appellant,

v.

Cr. Nos. 31701-'77 and 74050-'76

UNITED STATES, Appellee.

Appeal from the Superior Court of the District of Columbia

(Hon. H. Carl Moultrie I, Trial Judge)

(Submitted March 17, 1981 Decided April 3, 1981)

Before: Harris and Mack, Associate Judges, and Yeagley, Associate Judge, Retired.

MEMORANDUM OPINION AND JUDGMENT

Appellant pleaded guilty to four counts of larceny after trust, in violation of D.C. Code 1973, § 22-2203. He now appeals the denial without a hearing of his motion to vacate sentence, made pursuant to *id.*, § 23-110. Finding that none of appellant's numerous contentions (most of which have been disposed of definitively before) merits reversal, we affirm.

I

The charges against appellant arose from his activities between 1974 and 1977. During that period, appellant, posing as a real estate agent or owner of property, induced various persons to give him large sums of money as deposits on property that he never was in a position to convey. Prospective buyers were told that he would hold their deposits until their checks cleared the bank or their credit was approved. None of the properties ever was conveyed to the buyers and in no case was a deposit returned. The amounts obtained as "deposits" by the appellant ranged from $700 to $5,000.

II

The provisions of § 23-110 require that the court grant a prompt hearing on a prisoner's motion to vacate, set aside or correct his sentence "[u]nless the motion and files and records of the case conclusively show that the prisoner is entitled to no relief." D.C. Code 1973, § 23-110(c). It is further provided that "[t]he court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner." *Id.*, § 23-110(e).

Each of appellant's challenges to his guilty plea was raised at a full and fair evidentiary hearing on a post-sentencing motion to withdraw his plea under SUPER. CT. CR. R. 32(e).1/ The trial court, finding

---

1/ Appellant alleged: (1) that he pleaded guilty because his previous counsel threatened to withdraw if he did not; (2) that counsel never informed him of the possible legal defenses available to him; (3) that counsel promised him that he would receive only a "slap on the wrist" if he pleaded guilty; and (4) that he had attempted to withdraw his guilty plea at the time of sentencing.

no manifest injustice, denied that motion. No appeal was taken from that ruling. Because appellant brings no new evidence to sustain these claims and receives no support from the record, he is entitled to no relief. *See* D.C. Code 1973, § 23-110(c).

III

Appellant contends that the presence of a former acquaintance in the grand jury proceedings which culminated in his first indictment in Criminal Case No. F-74050-'76 rendered his indictment by that grand jury so defective and violative of his rights that his conviction must be vacated. We agree with the trial court that the presence of that person (who was excused as a grand juror after the second witness testified) did not render the indictment defective, nor was any such contention timely raised.

IV

Appellant claims that his sentence is excessive and constitutes cruel and unusual punishment in violation of the Eighth Amendment. Where, as here, the sentence was well within the limits prescribed by the statute and appellant acknowledged his understanding of the punishment prior to pleading guilty, such a contention not only has no basis, but moreover is not reviewable by this court. *See, e.g., Walden v. United States,* D.C.App., 366 A.2d 1075 (1976).

V

Finally, appellant asserts that he was denied due process and equal protection of the law in that the trial court conditioned consideration of his motion for reduction of sentence upon his ability to make restitution. The claim is frivolous; it was appellant who suggested making restitution a condition to granting a reduction of sentence.

In sum the appellant's claims have been either fully addressed in a prior hearing or are "vague and conclusory,"2/ and thus the "motion and files and records of the case conclusively show that the prisoner is entitled to no relief." D.C. Code 1973, § 23-110(c). We accordingly affirm the denial without a hearing of appellant's most recent motion for post-trial relief.

Accordingly, it is

ORDERED and ADJUDGED that the ruling appealed from be, and it hereby is, affirmed.

PER CURIAM.

FOR THE COURT:

James F. Lynch

JAMES F. LYNCH,
Acting Clerk

2/ *Pettaway v. United States,* D.C.App., 390 A.2d 981, 984 (1978) (lists the categories of claims which do not merit hearings under § 23-110).

FILED
APRIL 9, 1981

DISTRICT OF COLUMBIA COURT OF APPEALS

HERSE L. WHITE
APPELLANT

V. : NO. 80-1157

UNITED STATES OF AMERICA
APPELLEE

.....

NOTICE OF APPEAL

Notice is hereby given that Herse L. White, in propria persona, hereby appeals to the United States Supreme Court from the decision of this Court entered on April 3, 1981, affirming the D. C. Superior Court's denial of the appellant's motion to vacate, made pursuant to 23 D. C. Code 110. Jurisdiction for this appeal is founded on 28 U. S. C. 1257(2)(3)

Herse L. White
P. O. Box 25
Lorton, Va. 22079

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a copy of this notice of appeal to the United States Supreme Court has been served by mail to the Office of the Solicitor General, Department of Justice, Washington, D. C. 20530, this 7th day of April, 1981.

Herse L. White

Copies to:

Judge Carl W. Moultrie I
D. C. Superior Court

Criminal Clerk, D. C. Superior Court
D. C. Superior Court

Office of the U. S. Attorney for the D. C. Appeals Court
500 Indiana Ave., N. W.
Washington, D. C.

DISTRICT OF COLUMBIA SUPERIOR COURT
CRIMINAL DIVISION

UNITED STATES OF AMERICA
PLAINTIFF

V

CRIM. CA. # 74050-76 & 31701-77/

CHARLES L. WHITE
DEFENDANT

.....

AFFIDAVIT/

I, Deberah White, being duly sworn, depose and says:

Mrs. Patricia Gardner approached my father and I, in the Murray's Store on Georgia Avenue, N. W., where we were shopping. She shouted to my father that he was going to jail because he had no business asking them to move from the apartment that he owned on Missouri Avenue, N. W.

She was angry and upset, and asked my father didn't he see her in the grand jury hearing that was held for his case.

It appeared that she wanted to let it be known that she was present for the grand jury hearing held for the above mentioned case.

Deborah White
Miss Deberah White

District of Columbia
Subscribed and sworn
to before me this
24th day of October
19 88.

Joan Long
NOTARY PUBLIC

My Commission Expires May 14, 1993

DISTRICT OF COLUMBIA SUPERIOR COURT
CIVIL DIVISION

HERSE L. WHITE, PLAINTIFF :

V :

D. C. SUPERIOR COURT, DEFENDANT. :

CRIM. CA. # 74050-76 & 31701-77.

AFFIDAVIT/

::::::::::::::::::::::::::::::::

AFFIDAVIT/

I, Anthony Crosby, being duly sworn, depose and says:

That I am a disinterested mutual party of the above case.

That I was present in the Murray's store where Mr. White and his daughter was shopping and when Mrs. Gardner approached him.

That Mrs. Gardner was angry and shouted to Mr. White that he was going to jail because he had no business putting them out of the apartment.

Anthony Crosby

Mr. Anthony Crosby

Please have notarized.

Subscribed and Sworn to before me this 27th day of March 1980

Edward R. Matse

NOTARY PUBLIC

My Comm. expires 2-1-81

with Mr. White concerning his plea, which is also a part of the transcript record, to which the Court must allude to.

Now, basically, what you have here is that Mr. White has said to the Court that he is an attorney, that he understands the law, although he hasn't dealt in criminal law so much. Now, counsel is correct that the only question before the Court is the question of manifest injustice that that Court has to decide.

Counsel does not say to the Court that Mr. White pinges his allegation on the fact that he was promised that he would receive a slap on the wrist. Counsel says that Mr. White had been promised by Mr. Collins that he may receive a slap on the wrist. / Santobello

The Santabillo case is a case which the United States Supreme Court ruled on, where the Government promises a certain fact and doesn't deliver, that that's one reason why the Court should grant the withdrawal of a plea. But, counsel isn't saying that to the Court. Counsel is saying that Mr. White's attorney sort of intimated that he would receive a certain sentence...

Interesting enough, however, in the colloquy between Mr. White and the Court, the Court asked Mr. White did anybody promise him anything as to how this Court would sentence him. And I believe Mr. White said no. That also is in the transcript.

CO-213.
New 1/76
Rev 2/77

United States District Court
For the District of Columbia
Office of the Clerk
3rd and Constitution Avenue, N.W.
Washington, D. C. 20001

James F. Davey
Clerk

February 24, 1981

Dear Mr. White,

With respect to your Petition for Writ of Habeas Corpus, you are advised as indicated by an "X" below.

☐ The Court has granted leave to proceed in forma pauperis and has assigned this case to Judge _____ for all purposes. Your case number, which you should place on all correspondence and papers to be filed, is: Civil Action No. _____. You will be timely notified of all court proceedings and actions in your case.

☒ On (Date) February 23, 1981, the Court granted leave to proceed in forma pauperis but dismissed your case, endorsing thereon as follows: "Dismissed without foundation".

This case was assigned Civil Action No. 81-0446.

☐ The Court has denied leave to proceed in forma pauperis on (Date) _____. Although you may not proceed in forma pauperis, your completed forms may be filed upon payment of the Clerk's filing fee of Ten Dollars ($10.00). Mail a money order payable to: "Treasurer of the United States", together with your completed forms to this office.

☐ Other: _____

Sincerely,

Encl.

By: _____
Deputy Clerk

80-6646

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HERSE L WHITE
APPELLANT

V NO.

UNITED STATES OF AMERICA
APPELLEE

.....

MOTION FOR LEAVE TO APPEAL INFORMA PAUPERIS

Comes now the appellant Herse L White, inpropria personam, respectfully move (pray) this most Honorable Court for leave to proceed without being required to prepay fees, costs or give security therefor, due to my poverty. As grounds I state the following:

1. The appeal to the D. C. Appeals was conducted informa pauperis, under the criminal justice act, all provisions of that act having been complied with.

2. The appellant is presently incarcerated and has no realistic possibility of acquiring funds with which to proceed.

3. Appellant has been approved to proceed informa pauperis in this case and other civil case's now pending in the D. C. Superior Court. See Civil cases numbered 7029-80, 10363-78 and 3349-80.

Respectfully Submitted

April 30th, 1981

Herse L. White
P. O. Box 25
Lorton, Va. 22079

Counsel for Appellant